

Exhibit A

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Hearing Date: September 28, 2010
Hearing Time: 10:00 a.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
MARK IV INDUSTRIES, INC., <u>et al.</u>	:	Case No. 09-12795(SMB)
	:	
Reorganized Debtors.	:	

**RESPONSE OF THE ORANGE COUNTY WATER DISTRICT TO REORGANIZED
DEBTORS' OBJECTION TO CLAIM NO. 1291**

Orange County Water District ("OCWD" or the "District"), by its counsel, Klestadt & Winters, LLP, Stinson Morrison Hecker LLP and Miller, Axline & Sawyer, as and for its response to Reorganized Debtors' Objection to Claim No. 1291 (the "Claim Objection"), respectfully represent and allege as follows:

burden to produce evidence that the District's claim is invalid. For all of the above reasons, Mark IV's objections lack merit.

I. Mark IV Is Liable For Its Ongoing Contamination.

1. Mark IV's argument that it has "fully remediated any contamination that may be attributable to the Mark IV sites" (Objection at 5) is simply incorrect. Mark IV relies for its assertion on a simple "no further action" letter from the Santa Ana Regional Water Quality Control Board for its "Prout" and "EDO" sites, attached as Exhibit D to the Declaration of Mark Barbiero. A no further action letter from the Regional Board, however, does not mean the contamination from the sites has been fully, or even partially, remediated.

2. As explained in *In re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation* [hereinafter *In re MTBE*], 2007 WL 700819 (S.D.N.Y. 2007), the Regional Board and the Orange County Water District are distinct entities with different but related interests and mandates. "Both the Regional Board and [Orange County Health Care Agency (OCHCA)] have been active in remediation of MTBE at spill sites within OCWD's service area, but neither agency has undertaken MTBE remediation efforts beyond those spill sites." *Id.* at *3. The District is responsible for protecting sources of drinking water from contamination that, like Mark IV's, has migrated off-site. As noted in *In re MTBE, supra*, "OCWD is first and foremost a state environmental agency that may well have the best knowledge of what efforts are most likely to remediate MTBE plumes in its service area. Indeed, OCWD's credentials are impressive." The Court concluded that, "[w]hile other agencies such as the Regional Board or OCHCA may engage in spill-site remediation, they do not attempt remediation or containment of MTBE plumes that may have escaped the spill site before remediation efforts began (or may persist despite such efforts)." *Id.* at *6.

to support apportionment. For all of the reasons set forth above, OCWD respectfully requests that the Court overrule the Claim Objection.

Dated: New York, New York
August 31, 2010

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